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Attorneys for Defendant

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

SALVADOR ROBLES, individually and on) **CASE NO. 2:13-CV-00161-JAM-AC**
behalf of others similarly situated,)

) **CLASS ACTION**

)
Plaintiffs,)

) **STIPULATION AND ORDER RE: FIRST**
) **AMENDED COMPLAINT AND**
) **RELATED MATTERS**

v.)

COMTRAK LOGISTICS, INC., a Delaware)
corporation; and DOES 1 through 10,)
inclusive,)

)
Defendants.)
)
_____)

1 **STIPULATION**

2 WHEREAS, on January 25, 2013, Plaintiff filed his Complaint.

3 WHEREAS, Defendant filed its Motion to Dismiss the entire action on March 26, 2013,
4 with a noticed hearing date of May 15, 2013;

5 WHEREAS, Plaintiff anticipated filing a First Amended Complaint the same time
6 Defendant filed its Motion to Dismiss, in order to add the same individual labor code claims on
7 behalf of Plaintiff Robles for the time he spent as an employee of Defendant;

8 WHEREAS, on April 15, 2013, the parties filed a Stipulation and Proposed Order RE:
9 Tolling Agreement and Related Matters seeking to preserve the May 15, 2013, hearing date on
10 Defendant's Motion to Dismiss and to preserve Plaintiff's right to file a First Amended Complaint
11 pursuant to Fed. Rule Civ. Proc. 15(a)(1)(B) after the hearing on the Motion to Dismiss;

12 WHEREAS, the deadline for Plaintiff to file a First Amended Complaint as a matter of right
13 pursuant to Fed. Rule Civ. Proc. 15(a)(1)(B) was April 16, 2013;

14 WHEREAS, the parties have reached the following agreement, each subpart below being
15 material and necessary to the entire agreement;

16 THEREFORE, the parties, through their respective counsel of record, agree to stipulate that;

17 (a) Defendant will withdraw its current Motion to Dismiss;

18 (b) Plaintiff will file a First Amended Complaint within fourteen (14) days of the date this
19 Stipulation is filed; and

20 (c) Defendant will have twenty-eight (28) days from the date Plaintiff files his First Amended
21 Complaint to file its responsive pleading.

22 Following which the normal briefing deadlines will govern, tied to the hearing date for the
23 anticipated motion to dismiss.

24 All parties further agree that the parties' following arguments are reserved, and not in any
25 way impacted by this Stipulation:

26 (a) Plaintiff reserves the right to argue that Plaintiff's labor code claims relating to his
27 status as an employee relate back to the January 25, 2013, filing date of the original Complaint; and
28

(b) Defendant's arguments that Plaintiff's claims do not relate back to the January 25, 2013, filing date of the original Complaint, and all other defenses and arguments which Defendant had available as of the date this Stipulation is filed with the Court. Defendant also reserves all other available arguments in response to the original Complaint and any First Amended Complaint.

DATED: April 22, 2013

MARLIN & SALTZMAN, LLP

By: /S/ Christina A. Humphrey

Christina A. Humphrey, Esq.
Leslie H. Joyner, Esq.
Attorneys for Plaintiff

DATED: April 22, 2013

SEYFARTH SHAW LLP

By: /S/ Timothy B. Nelson

Thomas J. Piskorski
Brandon R. McKelvey
Timothy B. Nelson
Attorneys for Defendant

ORDER

Pursuant to stipulation of the parties and good cause appearing therefore, **IT IS SO ORDERED.**

DATED: 4/23/2013

/s/ John A. Mendez

JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE